

No. 14500

United States
Court of Appeals
for the Ninth Circuit

In the Matter of:

The Application of L. B. & W. 4217; and the Application of JONES, WILSON and ERVIN, d/b/a "THE CLUB" for Beverage Dispensary License, C. K. JONES, RICHARD L. WILSON, and E. WELLS ERVIN,

Appellants.

Transcript of Record

Appeal from the District Court
for the District of Alaska,
Third Division

FILED

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Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.—11-26-54

PAUL P. O'BRIEN,
CLERK

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ATTORNEYS FOR APPLICANTS

MR. E. L. ARNELL,

Attorney at Law,

202 Turnagain Arms,
Anchorage, Alaska.

APPLICATION FOR LIQUOR LICENSE IN
THE TERRITORY OF ALASKA
Third Division

License No. Application No.

1. I/we, C. K. Jones, Richard L. Wilson, & E. Wells Ervin, the undersigned, doing business as The Club, hereby apply for a Beverage disp. liquor license for the year ending December 31, 1954, and tender herewith the sum of \$500.00 plus a filing fee of \$18.00.

2. Name and address and how long a resident of Territory of Alaska?

C. K. Jones, Kenai, Alaska—15 yrs.

Richard L. Wilson, Kenai, Alaska—6 yrs.

E. Wells Ervin, Anchorage, Alaska—37 yrs.

3. Is this a first application, or for a renewal?

Renewal.

Type of License

Beverage Dispensary

(Population less than 1500) \$ 500.00
(Population over 1500) 1,000.00
 (Minimum residence 1 year)

Restaurant 150.00

Road House 75.00

(Situated not less than 18 miles from
incorporated city)

In the Matter of the Application of

Club 200.00
(Incorporated at least 2 years)

Retail Stock Sale..... 100.00

Bottling Works 100.00

Brewery 100.00

Retail 300.00
(Minimum residence 1 year)

Distillery 100.00

Importers 500.00

Common Carrier

Boats (For boats over 250 tons U. S.
Customs House measurement only). 250.00

Railroad Buffet Car..... 250.00

5. Location of business to be conducted under
license applied for:

Kenai, Alaska.

6. Distance by any public thoroughfare, street
or alley, from any school ground or church?

Over 200 ft.

If within 200 feet, and not a renewal, attach plat
showing exact location.

7. Have you any other kind of liquor license? If
so, state its kind and where used:

Inlet Bar & Inlet Liquor Store.

8. Endorsements as to character and integrity of applicant, and desirability of issuing license applied for. (Five Endorsers Must Sign Personally Below)

.....
.....

Name, Address, Occupation, Residence in Territory.

9. Are you a citizen of the United States? If so, born or naturalized?

Born.

10. If a corporation, are you qualified to do business in the Territory?

11. For Use Outside of Incorporated Towns: I have attached hereto a complete written list, alphabetically arranged, of all citizens of the United States over the age of 21 years residing within a radius of one mile of the place for which the license is desired, stating the actual place of residence of each, by street and number where possible, and the length of such residence thereat, verified by oath by the person taking the actual census and that said census was taken within six weeks prior to the date of this application. I have also attached hereto a petition containing the names of a two-thirds majority of all citizens over the age of 21 years residing within one mile (radius) of the place where liquor is to be sold, bartered, manufactured, etc.

12. Applicant Declares: If application is for Retail or Dispensary license, if an individual or as-

sociation, that he has resided in Alaska for at least one year prior to the date of this application;

If a corporation, that it is qualified to do business in Alaska;

If application is for a Beverage Dispensary or Retail Liquor license, that no corporation, wholesaler, owner, officer or representative of any brewery, winery, bottling works or distillery owns any interest in such business or has financed directly or indirectly the applicant in procuring quarters or supplying equipment or furnishings in order to conduct such business;

That no person or persons other than the applicant has any direct or indirect financial interest in the business for which this license is sought; that he or she will superintend in person, the management of the business and if any other person is employed to manage the same, that he or she will have the qualifications of an applicant and that applicant will be responsible for the proper conduct of the business;

That the building in which liquor is to be sold is 200 feet or more from any school ground or church, or, if the license is a renewal that it is for a building in which the sale of intoxicating liquor was authorized by law on March 23, 1949;

If a retail Liquor license is applied for, that the premises are not connected by doors or otherwise with premises upon which any other business is conducted;

If application is for a Club license, that applicant has been incorporated under Territorial or National charter for two years or more.

/s/ E. WELLS ERVIN,

/s/ C. K. JONES,

/s/ RICHARD L. WILSON,

Name of Persons or
Corporation;

.....,

Signature of Officer of
Corporation and Title;

.....,

Principal Office of
Corporation.

United States of America,
Territory of Alaska—ss.

C. K. Jones, Richard L. Wilson & E. Wells Ervin,
being first duly sworn on oath, depose and say:
They have read the foregoing application on the face
and back hereof and the same is true in all respects.

/s/ C. K. JONES,

/s/ RICHARD L. WILSON,

/s/ E. WELLS ERVIN,
Signature.

In the Matter of the Application of

Subscribed and sworn to before me this 8th day
of December, 1953.

[Seal] /s/ IRENE WELCH,
Notary Public. Comm. Exp. 11/1/54.

Title of Officer Administering
Oath.

Must Be Completed and Signed by Applicants
Outside of Incorporated Towns Only

Kenai, Alaska.
December 8, 1953.

I, C. K. Jones, Richard L. Wilson & E. Wells Ervin, the applicants on the foregoing application for a Beverage Disp. liquor license, do hereby certify that the number of citizens over the age of twenty-one years that reside within a one-mile radius of my place of business are 255 in number; that the number of bona fide and qualified citizens that have signed the petition that accompanies my application are 178.

/s/ E. WELLS, ERVIN,
/s/ C. K. JONES,
/s/ RICARD L. WILSON,
Applicants.

Note: Section 12. Penalties. A violation of any of the provisions of this Act shall be deemed a misdemeanor, and upon conviction thereof shall be punished by imprisonment of not more than one year, or by a fine of not more than Five Hundred

Dollars (\$500), each violation to be considered a separate offense. Any intoxicating liquors shipped into the Territory, other than to licensees hereunder and contrary to the provisions of this Act, shall be deemed contraband, and subject to confiscation by the Territory, or any enforcement officer, and any intoxicating liquors so seized shall be sold under the order of the District Court, and the proceeds thereof deposited with the Territorial Treasurer.

That any false material statement made in any part of this application shall be deemed perjury and upon conviction thereof shall be subject to the penalty provided by law for the crime of perjury.

Bond No. 193345.

Territory of Alaska

Bond for Beverage Dispensary License

Know All Men by These Presents, That we, Richard L. Wilson, C. K. Jones, and E. Wells Ervin, d/b/a The Club, of Kenai, Alaska, as Principals, and the American Casualty Company of Reading, Pennsylvania, organized under the laws of the State of Pennsylvania and duly qualified to transact surety business in the Territory of Alaska, as Surety, are held and firmly bound unto the Territory of Alaska, in the full and penal sum of Twenty-five Hundred Dollars (\$2,500) lawful money of the United States for payment of which, well and truly to be made, we and each of us, bind ourselves, our

heirs, executors, administrators, successors and assigns, jointly and severally firmly by these presents.

Sealed with our seals and dated this 3d day of December, 1953,

The Conditions of the Above Obligation are such, That whereas the above bounden Principals have filed in the District Court for the Territory of Alaska, an application for a license to engage or continue to engage in the business of Beverage Dispensary in accordance with the provisions of Chapter 78 of the 1937 Session Laws of the Territory of Alaska as amended by said Session Laws of 1939 and desire to give bond as required by said law, for the term beginning January 1, 1954, and ending December 31, 1954, and the Principals are the sole owner and no other persons are financially interested either directly or indirectly in the business to be covered by said license.

Now, Therefore, if the said Richard L. Wilson, C. K. Jones & E. Wells Ervin, the above-bounden Principals, shall, if said license is issued to them, conduct said business in accordance with the existing laws pertaining to the manufacture and sale of intoxicating liquor in Alaska, then this bond shall be void and of no effect; otherwise, to remain in full force and virtue.

In Witness Whereof, the Principals have hereunto set their hands and seal, and the said Surety has caused these presents to be signed by its duly authorized Attorney-in-fact and its corporate seal

to be hereto affixed the day and year first above written.

THE CLUB,
Principal.

/s/ E. WELLS ERVIN,

/s/ RICHARD L. WILSON,

/s/ C. K. JONES,

AMERICAN CASUALTY COMPANY OF
READING, PENNSYLVANIA,

[Seal] By /s/ R. H. McDONALD,
Attorney-in-Fact.

April 1, 1954.

Affidavit

I, C. K. Jones, first being duly sworn, say: That the following is a full and complete census of all citizens over the age of 21 years, residing within a one-mile radius of The Club during the preceding six months; and that it was taken within the last two weeks.

[Seal] /s/ C. K. JONES.

Subscribed and Sworn to before me this 12th day
of April, 1954.

[Seal] /s/ BETTIE K. JACOBS,
Notary Public in and for
Alaska.

My commission expires: 5/19/54.

[Here follow list of 252 names.]

* * *

[Endorsed]: Filed April 13, 1954.

In the District Court for the Territory of
Alaska, Third Division

In the Matter of the Application of:

L. C. PARSELL, Doing Business as THE CLUB,
for a Beverage Dispensary Liquor License.

CONSENT OF RESIDENTS

We, the undersigned, citizens of the United States and bona fide residents of the Territory of Alaska, over the age of twenty-one years, residing within the one (1) mile area of The Club, Lot 16, Block 5, Townsite of Kenai, and having been physically present, living, and residing within the one-mile area for more than six out of the twelve months immediately preceding the filing of this Petition, and in good faith, consent to, and ask that a Beverage Dispensary Liquor License be issued to L. C. Parnell, doing business as The Club, for such sale of intoxicating liquor in the voting and recording precinct in which the aforesaid described premises are located for the year ending December 31, 1954.

[Here follows list of 178 names.]

* * *

[Endorsed]: Filed April 13, 1954.

CERTIFICATE OF APPLICANTS

We, C. K. Jones, Richard L. Wilson & E. Wells Ervin, applicants for the attached liquor application, do hereby certify that the building in which liquor is to be sold is 800 feet by the shortest direct line from a school ground or church.

/s/ E. WELLS ERVIN,

/s/ C. K. JONES,

/s/ RICHARD L. WILSON,

Applicants.

[Check]

59-6

The First National Bank
of Anchorage

No.

Mt. McKinley

Anchorage, Alaska, Dec. 8, 1953.

Pay to the

Order of Clerk of Court.....\$518.00

Five Hundred Eighteen and no/100 Dollars.

/s/ E. WELLS ERVIN.

United States of America,
Territory of Alaska—ss.

AFFIDAVIT

Richard L. Wilson, of Kenai, Alaska, being first duly sworn upon oath, deposes and says:

That on or about the 5th day of December, 1953, I went to the office of the Court Clerk at Anchorage for a renewal of the liquor license for the Inlet Bar at Kenai. Upon the same date, and at the same time I had an application, together with all supporting papers for a renewal license for The Club, also located at Kenai.

I informed the Deputy Clerk, on duty at the counter in the office of the Clerk, that I had recently had a fire at The Club, with about one thousand dollars' worth of damage. I said that I would like to know whether or not I could hold up that application for approximately two or three months until the building was again ready for occupancy.

The young lady on duty advised me that this would be perfectly satisfactory and that I had until June, 1954, as long as it was for a renewal, stating, in substance, "If you want to wait you can wait as long as it is a renewal and you have the necessary sixty-six and two-thirds of the people. You have until the first of July before it is considered a new license."

Further affiant sayeth not.

/s/ RICHARD L. WILSON.

Subscribed and sworn to before me this 12th day
of May, 1954.

[Seal] /s/ EDWARD L. ARNELL,
Notary Public for Alaska.

My Comm. expires: 6/21/55.

[Title of District Court and Cause.]

M. O. SETTING CAUSES FOR HEARING

Now at this time upon motion of Edward L. Arnell, counsel for Applicants, Wilson, Ervin and Jones,

It Is Ordered that cause No. L. B. & W. 4217, entitled In the Matter of the Application of L. C. Parnell at Kenai for a Beverage Dispensary to Expire December 31, 1954, and In the Matter of the Application of Jones, Wilson and Ervin for a Retail License to Expire December 31, 1954, be, and they are hereby, set for hearing at 4:00 o'clock p.m. of Wednesday, May 19, 1954.

Entered May 14, 1954.

[Title of District Court and Cause.]

HEARING ON APPLICATION FOR BEVERAGE DISPENSARY LIQUOR LICENSE TO EXPIRE DECEMBER 31, 1954

Now at this time Hearing on Application for Beverage Dispensary liquor license to expire December 31, 1954, in cause No. L. B. & W. 4217, entitled, In the Matter of the Application of L. C. Parnell at Kenai for a Beverage Dispensary License to Expire December 31, 1954, and In the Matter of the Application of Jones, Wilson and Ervin for a Beverage Dispensary License to Expire December 31, 1954, came on regularly before the Court, Applicant Wilson present and with Edward L. Arnell, counsel for applicants; William T. Plummer, United States Attorney, and Clifford Groh, Assistant United States Attorney, present for and in behalf of the Government, the following proceedings were had, to wit:

Richard Leon Wilson, being first duly sworn, testified for and in behalf of the applicants.

Whereupon, cause continued for arguments to May 21, 1954, at an hour to be set later.

Entered May 20, 1954.

[Title of District Court and Cause.]

M. O. RENDERING ORAL DECISION

Now at this time the Court rendered oral decision in cause No. L. B. & W. 4217, entitled In the Matter of the Application of L. C. Parnell, d/b/a The Club, at Kenai, for a Beverage Dispensary Liquor License to Expire December 31, 1954, and Denied Application, and written decision to follow.

Entered July 2, 1954.

In the United States District Court for the District of Alaska, Third Judicial Division, Anchorage

In the Matter of:

The Application of L. B. & W. 4217; and the Application of JONES, WILSON and ERVIN, d/b/a "THE CLUB," for Beverage Dispensary License

MEMORANDUM OPINION

This matter comes before the court based upon the application of L. C. Parnell for a beverage dispensary liquor license for "The Club" at Kenai, Alaska.

The file will reveal that the application was filed on the 13th day of April, 1954. Initially the matter was set down for hearing on the 19th day of May at the hour of 4:00 o'clock.

The file further reveals that C. K. Jones, E. Wells Ervin and Richard L. Wilson prepared an application for beverage dispensary license on the same premises during the early part of December, 1953, however, the same was never filed. These applicants, by affidavit and documentary evidence, set forth the fact that they were advised by a clerk of the District Court that if they did not desire to file at that time they could do so at some subsequent period, but within the six months after January 1, 1954.

The application of Jones, Ervin and Wilson, which is tied into the application of Mr. Parnell in File No. L. B. & W. 4217, were represented by their counsel, Mr. E. L. Arnell, who has submitted a brief in support of the application of Jones, Ervin and Wilson, while L. C. Parnell neither appeared in person nor was he represented by counsel.

Mr. Arnell, attorney for Jones, Ervin and Wilson, advised the court that he did not represent Mr. Parnell and that Mr. Jones, Ervin and Wilson had no connection whatsoever with the application of Mr. Parnell. The file indicates facts to the contrary for on the last page of one of the census we find the following:

“I, L. C. Parnell, the applicant on the attached application, hereby certify that the place of business is 800 feet by the shortest direct route from any school ground or church.

“/s/ L. C. PARSELL.”

And underneath that is the following:

"This is a renewal and not a new license. Only a transfer from Wilson, Jones and Ervin, d/b/a The Club, to L. C. Parnell, d/b/a The Club."

Nevertheless, even though the evidence is in conflict concerning the respective position of the applications for "The Club" liquor license, the matter is unimportant in the opinion of the court based upon the law, all of which is more fully set forth in the Memorandum Opinion given by this court in the L. B. & W. Liquor License No. 4004, Tony Bordenelli and Eyvohn Bordenelli.

In addition to the memorandum opinion set forth in L. B. & W. No. 4004 these applications, that is, Mr. L. C. Parnell and C. K. Jones, E. Wells Ervin and Richard L. Wilson, make application for a liquor license under 35-4-15 of the 1949 Compiled Laws of the Territory of Alaska, as amended by Chapter 116 of the 1953 Session Laws of the Territory of Alaska, which provides for a renewal.

As to the application of Mr. L. C. Parnell, I am of the opinion that a liquor license is purely personal (53 C.J.S. 643, Section 42; 73 NE 884) and, therefore, it is not available and affords no protection to others and as a general rule a liquor license cannot be transferred without the consent of the license authority unless the license statute provides otherwise (53 C.J.S. 657, Section 45). In Alaska the transfer can only be effected by consent of the court (34-4-13). Also, it has been held "****" that

a liquor license granting the same privilege to the same person to sell liquor in the same place is a renewal license * * * but a license granted to a different person would not be a renewal." (Appeal of Stavalo, 71 Atl. 549, 550 and 36 Words and Phrases, p. 887.) Thus, the applicant, L. C. Parnell, could not comply with any of these tests, therefore, the application is hereby denied.

In the matter of the application of Jones, Ervin and Wilson, counsel has ably argued and cited considerable law concerning the right of the court under "statutory construction" stating that the court cannot "impose limitations and revisions which are not contained in the law." In this respect the court is not endeavoring to impose limitations or restrictions not intended by the Legislature, nor set forth in the law. However, this court is of the opinion that the definition of the word "renewal" must be strictly construed, therefore, as defined and construed by this court see memorandum opinion of Tony Bordenelli and Eyvohn Bordenelli, L. B. & W. No. 4004, the applicants, Jones, Ervin or Wilson, cannot file at this late date an application for renewal.

I am of the opinion that there must be a valid existing license at the time of the application for a renewal of a license so as to enjoy the qualifications and rights as set forth in Chapter 116 of the 1953 Session Laws of the Territory of Alaska which provides, among other things, that "no license shall be issued for the sale of any intoxicating liquor in

any building within one-quarter of a mile of any school ground or church building outside the corporate limits of a municipality * * * however, that a license may be reissued for the sale of intoxicating liquor in any building which said sale was authorized by law at a time subsequent to March 23, 1949."

I am of the opinion that Jones, Ervin and Wilson are not entitled to a renewal of their liquor license for "The Club" at Kenai for the reason that at the time of their filing of their application there was no valid existing license at the time. I am of the opinion that there must be a valid existing license at the time of the application, otherwise there can be no renewal, therefore, the impact of the 1953 Session Laws of the Territory of Alaska concerning the granting of liquor license comes into full force and effect, and since the applicants are not entitled to a renewal under the old license and since the applicants are not beyond one-quarter of a mile of any school or church building their application must be denied.

Counsel has argued for the applicants, Jones, Ervin and Wilson, that they have been lulled into a sense of, shall we say, "false security" by an officer of the court in that they were advised by the Clerk of the Court's office that they would not have to file at that time, but that they could do it at any time within six months after the first of the year. This, no doubt, is true and very regrettable, but under the case of Gouge vs. David, 202 P. 2d 489, I feel that this court is bound by the strict inter-

In the Matter of the Application of

pretation of the law and because the Clerk of the Court may have misled the applicants in respect to the filing date this court does not have any authority to go beyond the strict interpretation of the law and since the Clerk of the Court, like the Oregon Liquor Control Commission, was acting only in an administrative capacity his representation did not have the authority to bind this court.

Dated at Anchorage, Alaska, this 2nd day of July, 1954.

/s/ J. L. McCARREY, JR.,
District Judge.

[Endorsed]: Filed July 2, 1954.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that C. K. Jones, Richard L. Wilson and E. Wells Ervin, applicants above named, hereby appeal to the United States Court of Appeals for the Ninth Circuit from the final order and opinion in this cause, said order being dated and filed on the 2nd day of July, 1954.

This notice is dated the 30th day of July, 1954.

/s/ E. L. ARNELL,
Attorney for Applicants, Jones, Wilson and
Ervin.

Service of copy acknowledged.

[Endorsed]: Filed July 30, 1954.

[Title of District Court and Cause.]

APPELLANTS' STATEMENT OF POINTS

The points upon which appellants will rely upon appeal are:

1. That the Court erred in denying appellants' application upon the reason, as stated in the Court's opinion, a renewal upon appellants' application could not be allowed, for the reason that the license for the prior year had expired, and there was, therefore, no valid existing license to renew.
2. That the Court erred in ruling that appellants had to file an application for renewal prior to the end of the year for which a license had been issued, there being no such requirement in applicable statutes.
3. That the Court erred in ruling that applicants did not have the right to rely upon the representations of an employee of the Clerk's office of this court.
4. That said order of denial is contrary to law, for the reason that the Court did not have the power or jurisdiction to interpret such law contrary to the specific provisions thereof, and in effect add conditions not imposed upon applicants by such law.

/s/ E. L. ARNELL,
Attorney for Appellants.

Receipt of copy acknowledged.

[Endorsed]: Filed August 13, 1954.

In the District Court for the District of Alaska
Third Division

No. L. B. & W. 4217

In the Matter of:

The Application of L. B. & W. 4217; and the Application of JONES, WILSON and ERVIN, d/b/a "THE CLUB" for Beverage Dispensary License.

TRANSCRIPT OF PROCEEDINGS

May 20, 1954—3:00 P.M.

Appearances:

For the Applicants:

EDWARD L. ARNELL,
Attorney at Law.

For the Government:

CLIFFORD J. GROH,
Assistant U. S. Attorney.

The Court: You may proceed, Mr. Arnell.

Mr. Arnell: If your Honor please, I believe the file in this application will reflect that a bond was obtained through the LaBow Haines Company and was dated approximately December 18, 1953. That bond, I am informed, is still in full force and effect, has never been cancelled. I thought earlier this afternoon it had been filed in the Clerk's office at that time, but I was informed by Mr. Dimmock

that the bond itself had been delivered directly to one of the applicants and was not filed until the application was filed last week or whenever it was.

The Court: That will change the affidavits then.

Mr. Arnell: I think not, your Honor. With the Court's permission, I would like to request that the matter of argument be put over until sometime tomorrow at the convenience of the court and at this time we hear only the testimony of Mr. Wilson who actually brought the application and papers to the clerk's office sometime early in December, probably the first week.

The Court: Well, very well, the court hasn't any objection. If you can find time tomorrow afternoon I would be glad to hear argument of counsel.

Mr. Arnell: If the court would care I would like also to call one of the Territorial Legislators to illustrate what the Legislative intent was in the enactment of these various sections.

The Court: The court wouldn't be interested in that. [1*] The court has gone into that and has his mind made up as to the intent, therefore, it would be a waste of time.

Mr. Arnell: I think, your Honor, it might be helpful irrespective of the attitude of the court at the present time, to know what the legislative people had in mind when this particular section was amended.

The Court: Well, as I stated—

Mr. Arnell: If the court doesn't desire to hear him, I am bound by that decision.

The Court: No, the court would prefer not to hear it. The court had reason to go into that last fall. You recall the first day I was on the bench I was confronted with this problem, was bombarded about a week or 15 days with every attorney in town on that. I then talked to several legislators on it myself and while my opinion may be wrong, I do have an opinion. I don't want to waste your time or my time on that point.

Mr. Arnell: I would like to call Mr. Wilson.

The Court: Mr. Wilson may come forward and be sworn.

RICHARD LEON WILSON

called as a witness on behalf of the Applicants, being first duly sworn, testifies as follows on:

Direct Examination

By Mr. Arnell:

Q. Would you state your full name? [2]

A. Richard Leon Wilson.

Q. Are you one of the applicants in this proceeding? A. I am, sir.

Q. And you are a co-partner of Mr. Ervin and Mr. C. K. Jones, are you not? A. I am.

Q. You formerly did business under the name of "The Club"? A. That is true.

Q. Would you state to the court what you did in the month of December, 1953, with reference to this pending application?

A. Why, I got the necessary 66 and two-thirds

(Testimony of Richard Leon Wilson.)

consent of the names of the people who were living within a radius of one mile. I got the correct census and had it notarized and brought it in to the Clerk of the Court's office with another application, or two other applications of the same firm. In the meantime we had had a fire and had damaged "The Club" to the extent of approximately \$1,500.

Q. You made reference to two other applications, would you state to the court the names of those establishments?

A. Inlet Bar and Inlet Liquor Store.

Q. Were the applications for those two types of licenses then filed at the time you visited the Clerk's office? A. They were.

Q. And what time in December was that, as near as you can recall?

A. Well, there is a 21-day waiting period. I would say in the [3] first week in December, as I remember about the 7th, 6th or 7th, something like that.

The Court: In other words, Mr. Wilson, the court files would reflect that, wouldn't they?

A. Yes, they would.

The Court: Thank you.

Q. (By Mr. Arnell): You had this application at the time the others were filed?

A. That is correct.

Q. And would you state to the court why you did not at that time then file this particular application?

A. Well, I asked the lady in the Clerk of the

(Testimony of Richard Leon Wilson.)

Court's office, I explained to her that I had a certain amount of work that I would like to do on this one bar, liquor dispensary I believe it is quoted as, and that if I waited approximately 90 days while I did this work through the winter time before placing my application for a new liquor license, would it be a renewal under the new liquor laws and she said, yes, that I had up to 6 months which would put me the first of June, or the 30th of June, rather.

Q. Had you at that time applied for the bond required under the statute? A. Yes.

Q. And was that bond subsequently obtained?

A. I wrote a letter to Mr. Dimmock which is LaBow Haines Company [4] which handles our bonds from year to year and he informed me that those bonds were being made out and would be in the Clerk's office when I presented my application for my liquor license.

Q. Did anything else occur at the time you visited the Clerk's office with reference to this particular application or have you stated everything as you recall?

A. No, I was under the im—according to the way I thought and the way it was explained to me that I had a period of 90 days or 4 months or 5 months up to 6 months, according to the way she explained to me, to make application for this liquor license and due to that amount of work to do I thought I would wait because I had everything there notarized and all I had to do was put it across the board and put it in.

(Testimony of Richard Leon Wilson.)

Q. And as a result of these assurances you received from that office you withheld filing the application at that time? A. That is correct.

Q. Completed the renovation and remodeling that you contemplated? A. That is correct.

Q. Now, Mr. Wilson, were there any violations chalked up against your establishment last year at any time? A. No, sir.

Q. Never were any violations for which your license could be revoked?

A. I have been in business six years in Kenai and there has never [5] been a violation on them.

Q. To your knowledge has there been any opposition or protest to the granting of this license or any other license that you have had down there?

A. None.

Q. To the best of your knowledge your business reputation down there is good and acceptable to the general public? A. Very good.

Q. Would you state to the court, Mr. Wilson, how far this particular location is from any school, church or other—

A. Well, it is—under the old license was 200 feet and the nearest where my places are to the nearest place or church that the Club is is approximately 700 feet from the church.

Q. Are there any other buildings of a similar nature—schools or—

A. Then the next place is the Russian Church which is approximately 1,000 feet.

(Testimony of Richard Leon Wilson.)

The Court: You refer to your old license though, Mr. Wilson, you say 200 feet, what do you mean?

A. Under our old license before the new liquor laws were in effect last year you must have your place of business further than 200 feet.

The Court: That is correct.

A. And this license here which I believe should be a renewal is what I think that it should be, a renewal. If it was a new [6] license I wouldn't be bothering the court's time because it is too close to a church under the new license.

The Court: Thank you.

Mr. Arnell: I have no further questions.

The Court: Thank you, Mr. Wilson, you may step down.

Mr. Groh: May I inquire, your Honor.

The Court: Beg your pardon.

RICHARD LEON WILSON
testifies as follows on

Cross-Examination .

By Mr. Groh:

Q. Has the church been there for a long period of time, sir?

A. Well, the church has been there, yes.

Q. The closest one I mean.

A. Yes, it has been there, I would say 10 or 12 years.

The Court: That is the one within 200 feet?

(Testimony of Richard Leon Wilson.)

A. No, the closest church is 700 feet away. Under the old license it is 200 feet from the school.

The Court: Why did you make that statement?

A. I am sorry about that. We are over the 200 feet that were needed for the old license. The nearest church is approximately 700 feet which was there. I believe the church was built about 10 years ago and it has been there through the 6 years preceding this license, same license. [7]

The Court: That explains it.

Mr. Arnell: One more question.

The Court: Just a moment, please, you have cross-examination.

Mr. Groh: I just wanted to inquire about a couple of other things.

Q. (By Mr. Groh): Mr. Wilson, do you know who this person was that gave you this authority in the Clerk's office? Do you know whether they had any authority?

A. No, I don't. I presume that she was a clerk in the office and I don't know what her name is and I wouldn't recognize her actually because I never paid that much attention at the time presuming that she knew that she was giving me the correct information.

Q. You didn't discuss it with the Clerk of the Court?

A. No, I didn't. I asked to see the Clerk of the Court and he was out at the time.

Q. Did you, Mr. Wilson, consult your attorney about the possibility of getting a renewal after 4 or 5 months? A. No, I didn't.

(Testimony of Richard Leon Wilson.)

Q. You relied upon the representation of the clerk?

A. I relied on the word of the clerk, yes.

Q. Was this census and petition taken within 6 weeks of the time it was filed, sir? [8]

A. Yes, it was, it was taken within a period of approximately 10 days.

Q. When did you file application for your renewal? I have not read the court file.

The Court: That was in April, I think.

Mr. Arnell: That was in April.

Mr. Groh: I have no further questions.

The Court: That is all then, Mr. Wilson.

(Thereupon, the witness was excused and left the witness stand.)

The Court: Did you want something—

Mr. Arnell: Mrs. Wilson is here in court. She was with Mr. Wilson at the time these applications were taken over to the Clerk's office and she could corroborate his testimony, if you desire.

The Court: The court doesn't question the testimony of the witness in any way. It is just one of those unfortunate things. This court was not advised of what information has been disseminated out of the front office. I should have known, but at that time I was working under hostile circumstances and I didn't have the right of knowing what was going on out in my front office like I do at the present time. It is most unfortunate situation and I appreciate Mr. Wilson, Mr. Ervin and this other gentleman's position. He certainly had the right to rely

upon what they told him out in the front office, but the unfortunate part of the matter [9] is this: That contrary to a business, in my business then I would say that, well, I'd have to make good whatever she told him because he had a right to rely upon the clerks, that is what they are hired for, but the way the court stands at the present time unless you can convince the court to the contrary, even though the employee of the Clerk of the Court represented to the witness to the contrary, unfortunately the court can't change that law nor can the employee, that is the serious part of it, so I am very apologetic to the situation, but I am willing to hear argument of counsel and maybe you can convince me to the contrary.

Mr. Arnell: I am sorry, your Honor, I don't have time to argue it. I am prepared to argue it. We have completed research and I think that while we are not attempting to involve anyone in the Clerk's office or name anyone there, I think irrespective of what was said or done at that time these people are entitled to a renewal and that differs to the court's present attitude and opinion. I think that, your Honor, it is a situation in which—

The Court: That is your privilege.

Mr. Arnell: Which the Legislature, if their administration is derelict or forgetful, you might say, I think the court cannot be placed in the position where it has to substitute, so to speak, what the Legislature should have done and I think the present status of the law, that is precisely what is being asked of the court. [10]

The Court: That is right. I appreciate what you

state, Mr. Arnell, but the Legislature will not and absolutely refuses to take the responsibility. There is no other choice, but for the court to act as legislature and judge, too. It is a most unfortunate and most regrettable situation that ever could exist, but I don't know what we can do about it. We have been placed in this situation. We are of judicial determination because of the fault of the legislature, but there is nothing I can do about it at this time, but I certainly hope the Legislature will have enough backbone and enough intestinal fortitude to do something about it so it doesn't place the court in embarrassing situations. These things should be all spelled out so Mr. Wilson would know exactly what steps to take and shouldn't have to go by guess, as in the past. Is there anything else to come before the court at this time? You may be excused, Mr. Arnell. The court will remain in session to hear Mr. Plummer.

United States of America,
Territory of Alaska—ss.

I, Iris L. Stafford, Official Reporter of the above-entitled court, hereby certify:

That the foregoing is a full, true and correct transcript on Appeal in the above-entitled matter taken by me in Stenograph in open court at Anchorage, Alaska, on May 20, 1954, and thereafter transcribed by me.

/s/ IRIS L. STAFFORD. [11]

[Title of District Court and Cause.]

TRANSCRIPT OF PROCEEDINGS

June 10, 1954, 3:00 P.M.

Appearances:

For the Applicants:

EDWARD L. ARNELL,
Attorney at Law.

For the Government:

LYNN W. KIRKLAND,
Assistant U. S. Attorney.

The Court: I believe this was the time set down for the further argument in the case of the Application of L. C. Parnell, Liquor, Beer and Wine License No. 4217, is that correct, Mr. Arnell?

Mr. Arnell: I think it was another application. I don't represent Mr. Parnell. At the time argument was had on this application, I thought your Honor reserved decision pending argument on the application of Wilson, Jones and Ervin.

The Court: Yes, that is correct, yes. Now, you presented, as I recall, Mr. Wilson for testimony?

Mr. Arnell: Yes, we did, 2 or 3 weeks ago.

The Court: Then, you were going to present additional authority on the subject matter, is that not true?

Mr. Arnell: Yes.

The Court: You may proceed.

Mr. Arnell: If your Honor please, Mr. Kirkland: I won't bother your Honor to read the provisions of Chapter 131 of the '53 Session Laws other than to just point them out to the Court and

state that they contain the provisions with respect to renewals. Now, as I understand, the position of the Court at this time is the question as to what a renewal is?

The Court: That is correct.

Mr. Arnell: And whether or not a renewal has to be granted or occur prior to the expiration of the old license. I'd like [13] to point out to the Court that the particular sections of the Code that set up the qualifications for persons who may hold liquor licenses makes no reference to the fact that any person in order to obtain a renewal of license must have any different qualification or that he must file his application for renewal by a specified period of time and I think that is the crux of the entire issue here. In other words, we have a situation in our practice that has gone on for years and the Courts have allowed renewals without reference to the time that the application was filed—in other words, whether or not it was filed before or after December 31st, within the fiscal year. I think the Legislature could well be presumed to have knowledge of that practice. Having knowledge of the practice and having ignored it, I think, implied at least that they intended that it continue because of the continuing circumstances here in Alaska.

The Court: May I interrupt you, please. Is there any decision on that?

Mr. Arnell: Well, unfortunately, it was pointed out before the Court at the last argument, that there is no case, I think, that would be precisely the point. We have matters of statutory construction. I would like to call your Honor's attention, again, to Judge

Dimond's decision in the Alaska Labor Trade Association Case.

The Court: That is the Alta Club?

Mr. Arnell: Yes, which the Court is familiar with. There [14] is an opinion on file which I think is probably dictum and is still pertinent and serves the problem we have here. I think this is taken from page 484, in which Judge Dimond said,

"It is notable that with respect to applications for places outside of incorporated cities no showing is required in the application or otherwise, as to the integrity of the applicant and the desirability of the issuing of a license for the premises mentioned. Apparently, all that is necessary is that such an application be in compliance with the law and the consent of a majority of the local residents * * * That the Court must exercise lawful and sound, and not arbitrary, discretion in granting or refusing licenses * * * At any rate, it is obvious that in all cases the provisions of law must control."

Now, that would appear to establish the rule here that with respect to applications outside of an incorporated area, the Court does have some discretion as to what license may or may not be allowed, but again, I point out to your Honor that the Legislature has prescribed absolutely no limit or no restriction as to how or when or what manner a license once validly issued shall be renewed. The only cases I can find, your Honor, with respect to what a renewal is, is found in 71 Atlantic.

The Court: 71? [15]

Mr. Arnell: Yes, at page 549, in which the county commissioners had granted a renewal license to a party and he later then sold those premises and applied for a license elsewhere and the new man tried to enjoin the issuance of the new owners —rather, applied for the issuance of a license on the premises as previously licensed and his application was denied, and the Court said, with respect to renewal:

“The trial court rightly held that the license granted Bartley on November 1, 1907, was a renewal within the meaning of 2647 of the General Statutes of 1902. It granted the same privilege to the same person to sell in the same place specified in his license of the previous year * * * A license granted to Stavolo would not have been such a renewal, since it would have been a license granted to a different person.”

I think that, perhaps, is the closest legal definition we could get to renewal and here we have an application by the same people for the same premises.

The Court: Excepting, isn't that somewhat in conflict? Now, I am not sure of my facts on this point, but didn't Mr. Parnell have this place a year ago?

Mr. Arnell: No, I think not, your Honor, I think they are different premises. They might be adjacent to each other, but I do not think they are the same place, in fact, I am sure they are not. [16]

The Court: Are the facts in this case like this: that they had a liquor license here a year ago and

didn't renew it until now? Is that correct, the same individuals?

Mr. Arnell: The same individuals had a license for last year, that is, '53 and according to the testimony, Mr. Wilson came in sometime early in December with all of his papers in order and applied for his bond and presented them to the Clerk or Deputy, rather, and at that time, for some unexplained reason he got into a discussion about the fact that the premises had been partially damaged by fire and they would be in the process of repair for a period of time and it was then that he either asked, or the Deputy volunteered, the idea that it wouldn't be necessary to file the application at that time, but it could be withheld for renewal providing it was done before, I think, June 1st or July 1st.

The Court: Yes, I recall that. How did this Parnell come into play at all?

Mr. Arnell: I had no knowledge of that until I sat in court and heard it discussed and argued.

The Court: What is the name of the establishment that the parties are applying for? What is the name of it?

Mr. Arnell: I think it is called, "The Club."

The Court: That is what this is, too.

Mr. Arnell: Is it?

The Court: Yes. There is an inter-relation there somewhere, [17] Mr. Arnell. While they may have had it a year ago, I believe it's their intent to sell it and that changes the story of it very materially.

Mr. Arnell: I actually have no knowledge of that, your Honor.

The Court: Well, this application was filed on the 13th day of April, 1954, for "The Club," by Mr. L. C. Parnell.

Mr. Arnell: I think, if the Court did see fit to grant the license then it would be within the Court's discretion later, if the observation of the Court is correct, to transfer the license or to either grant or deny it.

The Court: Here is the problem: In the meantime, the new statutes come into existence and with the lapsing of the liquor license after the 31st day of December, 1953, then the question comes up whether or not this is a renewal or not. If it is a renewal, that is one thing; if it is another license, that is something else because then the force and import of the statute passed by the Legislature comes into play which makes this too close then to a church or school—I don't know which it is.

Mr. Arnell: That is true, your Honor, I recognize the fact that the privilege of engaging in the liquor business is something that can be extended or withdrawn almost at the will of the Legislature and it isn't an absolute constitutional right that anyone can exercise. However, in the absence, your Honor, [18] of some specific directives from the Legislature as to what the Legislature intends, in any given set of circumstances, I think then the question of a renewal while it can't be regarded as a matter of right, nonetheless there is some sort of —well I can't use the word right, but that is the only word I can think of which a person under the statute could rely upon to continue this privileged

business, so to speak, and I think the fact that a new application would be rejected, if it were filed in this particular case where an application is made by the same people, that it must be considered as a renewal. As I pointed out earlier, there is no limitation in the statute itself composed by the Legislature and I'd like to cite to the Court, an Arizona case which is not precisely in point, but it is an expression, I think, of the idea that I have in mind and it is found in 57 Pacific Second, at 1225. Now, your Honor—

The Court: 57 Pacific Second?

Mr. Arnell: Yes, 1225.

The Court: I have it.

Mr. Arnell: The Arizona Statute had a similiar provision of that contained in our Code and it set up that licenses had to be issued to qualified electors of the State and then set up certain other requirements of the persons seeking licenses. Then, also, there was prohibition against the issuance of a license within a certain distance of schools and in this particular case, the Attorney General or some other official challenged the [19] right of the applicant to obtain a license because of the fact that there had been a lot of protests filed by parents and people protesting based upon the fact that this license was close to a theater where there was a large traffic of children and women, and what-not, attending the theater and the tax commission ultimately denied the license and the applicant applied for a writ of mandamus and it was allowed and the Court said that,

"It is within the power of the Legislature to fix the locality of places where liquors may be sold and to forbid the issuance of licenses to premises within named distances from schools, churches, etc., and here the Legislature has exercised that power. It has said the only institutions in the state that shall be protected against proximity of places dispensing liquors are public and parochial schools, and as to these has left it discretionary with the tax commission.

"If the Legislature had conferred the general power of licensing liquor dealers on the tax commission when the commission was satisfied of the applicant's fitness, there is a line of decisions that would uphold the commission's discretion in refusing a license on the ground of nearness of such places to schools, churches * * *"

and so on. They went on and hold that in this case, the Legislature had not affixed a prohibition which would be applicable to this and therefore, the commission had absolutely no right [20] to deny the license even though perhaps objectionable upon public policy and everything else. The tax commission itself had found that the applicants themselves were personally qualified in every way and the only objection to it was based upon the protest and the court held that the mandamus writ should issue because the law was silent upon this particular problem and I point out again here, your Honor,

that our law is silent as to the time and manner and circumstances of renewal.

The Court: Therefore, the Court's got to fill the vacuum.

Mr. Arnell: I don't think, your Honor, that the Court has any duty or any power to fill the vacuum. Again, I point out that the Legislature was cognizant of this practice and I think if they wanted to fill this vacuum if it was assumed to exist, it's incumbent upon the Legislature, not the Court, to do it. I think you have to read the law and determine it in the light it is written and not add to it and I think beyond any question, if your Honor says it interprets the word, "Licensee" to mean that the person must be the holder of a license and that he must file his application before December 31st or he loses his right to renewal, I think the Court is adding something that is not in the law. Now, during the course of discussing this problem there had been discussions that if these people had filed their application before but for some reason or other it had been delayed and they did not consider it until this date that the Court might then still consider the application and [21] grant the license. Now, if we are to take a technical view of the problem, I think that that reasoning, your Honor, is fallacious for the reason that if the Court finds that it's absolutely mandatory that that application had to be filed before December 31st and acted upon by the Court in order to make it a renewal then even though the Court accepted an application but because of dereliction in the Clerk's

Office or because of some other circumstance the license was not issued, say until the 10th of January, following the date of application. I think then that the Court cannot renew it because the renewal, if it is construed in that light must follow before the old license expires and I think there again, the Court is imposing a condition or situation or interpretation into the law that is not there by reason of anything that the Legislature has said, and in support of that, I'd like to cite to your Honor a case of United States vs. Angell at 11 Federal 34, in which there was an indictment; the man was charged selling liquor without having obtained his federal license and he offered in evidence the receipt showing that he paid for the license and the Court excluded it as evidence upon the ground it was incompetent because his own license had expired and even though he had gotten this receipt which related back to the time prior to the charge set forth in the indictment the Court said, well, there was no license and it had expired and the fact that he had made payment and had a receipt but had not received his license, that the receipt [22] itself didn't take the place of the license and couldn't relate back to the time prior to the alleged commission of the offense and the Court in syllabus says,

"If a party having a license to retail liquors or sells or offers to sell after his license expires it is a violation of the law for which he is liable. When the period stated in a license issued to exercise a business for a specific time

expires, the license expires, no matter what stock he may still have on hand."

Now, I think we would be precisely in the same situation here. Assuming that someone came in and filed an application, your Honor, before the end of December and it was in process but the license actually had not been issued and later he was picked up by a marshal or somebody else and charged with selling liquor without a license because the license hadn't come in the mail and maybe hadn't been issued until the 10th, I think the fact that he filed an application would have absolutely no bearing upon the determination of a charge of that kind. In other words, I think if the Court's instruction is to be followed, every person seeking to engage in the liquor business must in order to renew their license not only have their application on file, I think, but the Court must have acted upon it before December 31st and I think any other interpretation could not be sustained, and there, again, you have an interpretation, your Honor, that is not specific in the law as it is written. [23] Furthermore, I think the Court has no right in putting something into the law that the Legislature should itself put in.

The Court: I can assure you that the Court doesn't want to legislate; yet, sometimes the Court gets in a ridiculous situation where you have to do something.

Mr. Arnell: I honestly feel, your Honor, that you would be in that position and I can't agree with you that it's incumbent upon the Court to ap-

proach this from the point of view that the Court has to plug a loophole or gap that is left by the Legislature.

The Court: I point out to you that the liquor license and annexation statutes are of such a nature unless the Court did something like that, you would never have liquor license and never have annexation.

Mr. Arnell: Well, the point I am trying to make here, your Honor, is there would probably be thousands or at least hundreds of situations that could occur right in this court and I think that if you adopted a view here that you have to plug a gap left in the law by the Legislature that actually, you are just opening the door to a multitude of problems for the Court. I think the past practice actually has been satisfactory. No one has been prejudiced particularly so far as renewal of license is concerned and the statute itself, the way it is worded, says that all that a man has to do to apply for a renewal is to show that he has not been convicted of a crime or violation of the law [24] during the year and he can get a license without a census or without a consent from year to year which seems to me to indicate the intention upon the part of the Legislature that they had in mind these various problems and didn't want to take it any farther than that. Another case, your Honor, which is similar to the Arizona Case that I cited is found in 82 Pacific Second 1099, that is a Colorado Case. I won't bother reading it—and I have several others here, but I think that the ones I mentioned are sufficient to sup-

port the idea that I have tried to express to the Court. Now, the only other point, your Honor, that I wish to make relates to the question of construction of a statute and here, again, I don't have a case involving whiskey, but the rule adopted by the Supreme Court, I think, is appropriate to this matter because of the gap or so-called gap that the Legislature left in this particular law. The case is found in 143—

The Court: Again, please.

Mr. Arnell: 143 U. S.

The Court: Thank you.

Mr. Arnell: At 457 and this involves an action, your Honor, on the part of the United States Government to collect a fine for bringing an alien into the United States in violation of, I guess they call it, the Alien Law or something, I don't see it here now—anyway, in this case, the church had entered into an agreement whereby a minister or church official in England [25] was brought into this country and this was construed to be an agreement in violation of this particular act for bringing an alien into the country and the government brought suit to collect the penalty and then the Court said that,

“It is a familiar rule, that a thing may be within the letter of the statute and yet not within the statute, because not within its spirit, nor within the intention of its makers. This has been often asserted, and the reports are full of cases illustrating its application.”

That particular quotation is found at 459; and then 461 the Court went on to say that—in its opinion, the Court says, referring to another case,

“All laws should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice, oppression or an absurd consequence. It will always, therefore, be presumed that the Legislature intended exceptions to its language which would avoid results of this character. The reason of the law in such cases should prevail over its letter.”

Then, the Court goes on there and several others are cited by Sutherland in the Third Edition which is here in the library in Volume 2, Sections 4502 and 4505, and I'd like to quote or read to the Court the one on page 316 which reads as follows:

“Thus, the assertion that a statute which is ‘clear and unambiguous’ needs no interpretation is, in fact, evidence [26] that the Court has considered the meaning of the statute and reached a conclusion on the question of Legislature intention. In many cases this will be a proper conclusion but frequently it merely disguises the Court’s unwillingness to consider evidence other than the Court’s own impression of what the Legislative intent is. Courts should not lose sight of the fact that statutory interpretation, whatever it may be called, so far as function of the courts and juries is con-

cerned, is a fact issue. Where available, the courts should never exclude relevant evidence on that issue of fact."

Now, the Court in this particular case has not heard any evidence as to the intent of the Legislature, but I think probably it would be a proper matter for the Court to consider. Sutherland in another quotation, page 320 says that,

"Independent judicial"—

The Court: What is the volume on that?

Mr. Arnell: Same volume, Volume 2, Section 4505. It says that,

"Independent judicial determination arrived at exclusively from the reading of words in the statute does not insure accurate interpretation and thus for the court to assert that the statute is clear and unambiguous is merely to assert that the statute, as read by the Court, produces a result which is satisfactory to the Court. It does [27] not necessarily mean that as read it reflects the Legislative intent."

Now, I think it is unfortunate that that is the position the Court is in here. In the absence of an expressed directive from the Legislature saying that this shall be done and that shall be done, the Court, I think, there being no prohibition, must go as it has in the past and accept these applications. I think to do otherwise would in this particular case set up a precedent that would probably never be an answer in any other case that would ever come be-

fore the Court and as I pointed out a minute ago, I think the Court is merely creating problems for itself in trying to meet these various situations as they will arise because they will all be different and yet the Court will be confronted with these different questions of fact and everything which—

The Court: Yes, but Mr. Arnell, don't you think the Court can rule on the interpretation of renewal and settle it once and for all?

Mr. Arnell: Well, I think, your Honor, in the absence of some directive from the Legislature as to what a renewal is, I don't—

The Court: Well, we don't have that, so the Court is going to have to determine what a renewal is.

Mr. Arnell: That case, your Honor—the point I am trying to make is, I don't think the Court can legislate. What you are [28] doing, you are attempting to design it for the Legislature and impose it on the law.

The Court: And I stress judicial rather than press legislative action, but I point out to you, Mr. Arnell, that is common practice of the Court when a question of interpretation or the definition of a word comes up, the Court has to do it, repeatedly.

Mr. Arnell: That is true, with respect to one word, your Honor, but here you are construing the entire statute and you can't construe it in such a way as to arrive at what you think the results shall be or in such a way as to do something which you in your own mind feel the Legislature should have done, but hasn't done. I think that, and your Honor

will, I think, readily recognize that all the cases that were cited in the last argument, in support of the opposition to the granting of a license were cases involving specified procedure and many of them the statutes expressly said that a certain thing had to be done by a certain time and here, we don't have any such thing. In fact, the Legislature has said in one way that a license shall not be granted for a period of less than 6 months. Now, that can be read a dozen of ways depending on what might be desired, but I think that, again, your Honor, is an expression of the legislative intent that a renewal license or a new license provided that it meets the qualification could be issued for a period of 6 months or could be issued at 9 months or 11 months. I don't see that there is any other alternative to the construction and if the [29] Court picks out one word such as "renewal" or another word such as "licensee," and says that these are the keys to the entire issue, then the Court, I think, is filling in the gaps of what Sutherland has described here where the Court is arriving at a conclusion which to the Court seems just, but which the Legislature has not expressly or even by inference covered, and in other words, the Court is making law where the Legislature has failed to do so. If that is the effect of this law,—I don't admit your Honor, that the Legislature failed. I think that we can rely upon the fact that the Legislators, many of them lawyers, know how these things are handled and if the renewals or the applications for less than a year were

not handled properly and there were complaints and various things, I think all of these points would have come up and been considered by the Legislature and I think then we would have had an act that said if a person wants a renewal he would have to file his application by December 15th of each year and license must be issued or it's out.

The Court: Let me go back to fact, just a moment. Aren't the facts in this case that in the year 1953, that Jones, Wilson and Ervin had the license? Aren't the facts also that on or about the 8th day of December, the same individuals made application but never did complete their application—they prepared it but didn't file it. And aren't the facts further supported by this, that one Mr. Parnell made application for the same [30] liquor license, "The Club" at Kenai on the 13th day of April, 1954, and aren't the facts further supported by this, that thereafter, believing there might be a question as to whether or not Mr. Parnell could get it, that the said Ervin, Wilson and Jones came in and made subsequent application for the same license?

Mr. Arnell: I think not to that, your Honor, but I don't know, and I'd be perfectly willing to call Mr. Ervin or any others in here. I think at the time there was negotiations for the sale of or lease of the premises or something and what happened to those, I can't say.

The Court: Well, I point out to you that they have an affidavit here stating that they had—did prepare such an application on or about the 8th

day of December, 1953, to renew the license in "The Club" and I will point out to you that the file reveals Mr. Parnell did file on the 13th day of April, but I don't have a date beyond that point. Mr. Hilton, do you have anything whereby Mr. Ervin, Wilson and Jones did file after Mr. Parnell filed for this?

The Clerk: Not afterwards, no.

The Court: Well, then, isn't the real applicant for this liquor license then Parnell?

The Clerk: Parnell—their claim was that they had transferred their interest down there to Parnell and it was expected that Parnell could apply for this same license and receive [31] it. Parnell said it is a renewal or supposed to be a renewal of the former license issued to Ervin, Wilson and Jones.

The Court: That is the record, Mr. Arnell.

Mr. Arnell: I will have to straighten that out, your Honor, I am sorry about that.

The Court: And that is a different situation than what you think it is.

Mr. Arnell: I agree with the Court on that, but my recollection of this transaction came to me piecemeal and it was that this application for renewal was based upon the fact that he couldn't get a license.

The Court: Well, here is the file and that is what the file reveals here. The affidavit states in here that he says here pursuant to—just a moment, please,—by Mr. Wilson. It says in his affidavit,

"That on or about the 5th day of December,

1953, I went to the office of the Court Clerk at Anchorage for a renewal of the liquor license for the Inlet Bar at Kenai. Upon the same date and at the same time I had an application together with all supporting papers for a renewal license for 'The Club,' also located at Kenai.

"I informed the Deputy Clerk on duty at the counter in the office of the Clerk that I had recently had a fire at 'The Club,' with about one thousand dollars' worth of damage. I said that I would like to know whether or not I [32] could hold up that application for approximately two or three months until the building was again ready for occupancy."

And then he states, the young lady on duty advised him that,

"If you want to wait, you can wait as long as it is a renewal and you have the necessary sixty-six and two-thirds of the people. You have until the first of July before it is considered a new license."

But, you see, the application being considered by this Court at the time only is the application of L. C. Parnell of "The Club."

Mr. Arnell: No, we filed an application, your Honor, for renewal.

The Court: It isn't before the Court in the file.

Mr. Arnell: Well, it was filed. That is what I thought we were arguing on.

The Court: Did you file an application for the year 1954, subsequent to December 8, 1953, by Mr. Jones, Mr. Wilson and Mr. Ervin?

Mr. Arnell: Yes.

The Court: Will you please come forward, Mr. Arnell.

(Thereupon, Mr. Arnell and Mr. Kirkland and the Deputy Clerk approached the bench and had an off-the-record discussion.)

The Court: Well, in light of the misunderstanding of [33] counsel in respect to the application of Jones, Wilson and Ervin, which is made out on the 8th day of December, 1953, and which has never been filed, but which has in fact been admitted in the same case as that of Mr. Parnell, I think this case should be continued until these facts are established by counsel and the Clerk of the Court.

Mr. Arnell: Does your Honor want me to bring Mr. Ervin in here to explain this Parnell deal?

The Court: Well, the Parnell deal speaks for itself, Mr. Arnell. I think it is a problem for you to work out with the Clerk of the Court as to the application of Ervin, Wilson and Jones of December 8th, 1953, as to when that application was supposed to have been filed.

Mr. Arnell: That was supposed to have been filed here recently and I don't know why it is not in that file. I think it has no relation to the Parnell application and so far as I know there is no existing deal or anything else transferring any license if it

were granted by the Court to Parnell or anybody else.

The Court: Well, there was—at one time there was a relation between the two because at that time—

Mr. Arnell: There was a proposal at least at one time, but I don't know.

The Court: I think counsel better look into that with Mr. Ervin and Mr. Hilton, Clerk of the Court, before we can go [34] further.

Mr. Arnell: All right, I will try to do that tomorrow.

The Court: As soon as we possibly can, I'd like to rule on that.

United States of America,
Territory of Alaska—ss.

I, Bonnie T. Brick, Special Official Reporter of the above-entitled Court, hereby certify:

That the foregoing is a full, true and correct transcript on Appeal in the above-entitled matter taken by me in Stenograph in open court at Anchorage, Alaska, on June 10, 1954, and thereafter transcribed by me.

/s/ BONNIE T. BRICK.

[Endorsed]: Filed August 20, 1954. [35]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO RECORD
ON APPEAL

I, Wm. A. Hilton, Clerk of the above-entitled Court, do hereby certify that I am transmitting herewith the original papers in my office dealing with the above-entitled action or proceedings designated to constitute the record on appeal, plus the remainder of said original file, including the transcript of arguments of counsel and statements of Court had at the hearing of the cause.

The papers herewith transmitted constitute the record on appeal from the order and opinion filed and entered in the above-entitled cause by the above-entitled Court on July 2, 1954, to the United States Court of Appeals at San Francisco, California.

[Seal] /s/ WM. A. HILTON,
Clerk of the District Court for the District of Alaska, Third Division.

Dated at Anchorage, Alaska, this 31st day of August, 1954.

[Endorsed]: No. 14,500. United States Court of Appeals for the Ninth Circuit. In the Matter of the Application of L. B. & W. 4217; and the Application of Jones, Wilson and Ervin, d/b/a "The Club" for Beverage Dispensary License, C. K. Jones, Richard L. Wilson, and E. Wells Ervin, Appellants. Transcript of Record. Appeal from the District Court for the District of Alaska, Third Division.

Filed September 2, 1954.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Circuit Court of Appeals,
Ninth Circuit

Cause No. 14500

In the Matter of:

The Application of L. B. & W. 4217; and the Application of JONES, WILSON and ERVIN, d/b/a "THE CLUB" for Beverage Dispensary License,

Appellant.

**ADOPTION OF STATEMENT AND
DESIGNATION**

Comes now C. K. Jones, Richard L. Wilson and E. Wells Ervin, Appellants, by their attorney, E. L. Arnell, pursuant to the provisions of Rule 17 of the Rules of this Court, and hereby adopt for all purposes of this appeal the designation of record and statement of points contained in the record heretofore filed in this Court.

Dated this 7th day of September, 1954.

/s/ E. L. ARNELL,
Attorney for Appellants.

Service of Copy acknowledged.

[Endorsed]: Filed September 13, 1954.

